THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[*Coram: Egonda-Ntende, Luswata, Nambayo, JJA*]

Civil Appeal No. 124 of 2015

(*Arising from High Court Civil Suit No. 505 of 2013 at Kampala*)

BETWEEN

Cwezi Properties Limited ========== Appellant

AND

Tulip Consultancy Limited ========== Respondent

(*On appeal from the ruling and orders of the High Court of Uganda (Commercial Division), (Kainamura, J.) delivered on 17th April, 2015*)

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

Introduction

[1] This is a first appeal against the ruling and orders of the High Court in Civil Suit No. 505 of 2013.

[2] The facts underpinning the appeal are that on 15th November, 2011, the appellant agreed to buy land and developments thereon situate at Plot 3 Gasper Oda Street, Ntinda, from the respondent at the sum of $760,000.00 payable in two instalments. At the execution of the contract, the appellant paid $150,000.00 and the balance of $610,000.00 was to be paid by 15th March, 2012. The appellant failed to pay the balance within the agreed timeframe. The parties entered into an addendum on 23rd May, 2012, which extended the payment time to 30th June, 2012 and introduced a penalty interest of 3% per month (36% per annum) on the outstanding balance. On the 26th July, 2012, the appellant subsequently paid $455,000 to the respondent bringing the total payment to $585,000.

[3] Following the appellant's failure to clear the balance within the time agreed, addendum no.1, and addendum no.2 was entered into by the parties. Addendum no.2 granted the appellant another six-months extension and imposed an inconvenience fee of $84,186 and penal interest of 16% for further delays. Despite the extension of time in addendum 2, the appellant still failed to pay the remaining balance. Consequently, the respondent filed a summary suit vide High Court Civil

Suit No. 505 of 2013. Pursuant to the suit, the appellant sought leave to appear and defend vide Miscellaneous Application No. 807 of 2013. The application for leave to appear and defend was dismissed with costs and judgment was entered for the respondent, as follows: (i) An order for specific performance of the contract by which the applicant/defendant (appellant herein) immediately pays a sum of US $284,561. (ii) The immediate payment by the applicant/defendant (appellant herein) of US $2333.33 per month being interest on US$ 175,000 at the rate of 16% per annum from the 27th day of July, 2013 until payment in full. (iii) That the applicant/defendant (appellant herein) pays the costs of the suit.

[4] The appellant being dissatisfied with the decision of the trial Court, lodged an appeal to this Court on the sole ground that:

> 'The learned trial Judge erred in fact and law when he found that Miscellaneous Application No. 807 of 2013 did not raise any points of contention in law or fact that necessitated the grant of leave to appear and defend H.C.C.S 505 of 2013.'

[5] The appellant sought the following orders:

i. The appeal be allowed.
ii. That the Judgement of the High Court be set aside.
iii. That the appellant be granted unconditional leave to appear and defend H.C.C.S 505 of 2013.
iv. The appellant be awarded costs of this appeal.

Representation

[6] At the hearing, the appellant was represented by Mr. Kavuma Terrence from M/s Kabayiza, Kavuma, Mugerwa & Ali Advocates, while the respondent was represented by Mr. Sebuliba Jordan Kiwanuka from Aegis Advocates.

Appellant's submissions

[7] Counsel for the appellant in his submissions faulted the trial Judge for arriving at the finding that there were no points of contention in law or fact to warrant to the grant of leave to appear and defend the suit.

[8] Counsel submitted that there was no additional consideration to support the subsequent introduction of interest, inconvenience fees and other penalties for the delayed payment of the purchase price, as indicated in addenda 1 and 2. He stated that the absence of consideration was a substantial triable issue and that the trial Judge erred in law and fact by refusing the suit to go to trial. Counsel further submitted that due to the

penalty clauses in the two addendums, Court would have been required to address the reasonableness of the stipulated penalty. Counsel relied on Section 26 (1) of the Civil Procedure Act and Attorney General v Dr. Maj. (Rtd) Anthony Jallon Okullo [2019] UGCA 164 and Cairo International Bank v Sadique M. Janjua [2011] UGSC 30 to submit that the interest of 3% per month claimed under addendum 1 and the penalty interest of 16% per annum claimed under addendum 2 of the contract are unreasonable, unconscionable and unenforceable since they significantly exceed average commercial bank rates.

[9] Relying on section 64 (2) (e) of the Contracts Act and clause 3.2 of the contract between the parties, appellant's counsel contended that the remedy of specific performance was not available to the respondent in H.C.C.S 505 of 2013. He argued that the appellant was entitled to terminate the contract and thus the respondent was not entitled to the remedy of specific performance. Lastly, the appellant argued that the contract between the parties fell within the ambit of section 28 of the Contracts Act because the second instalment was contingent upon the appellant obtaining financing from the bank and that without the financing, the appellant could not have performed his contractual obligation.

Respondent's submissions

[10] Counsel maintained that the learned trial Judge was right in finding that there were no triable issues and that the respondent was entitled to a summary Judgment. Learned counsel submitted that the interest for which the appellant became liable under the two addenda was a direct consequence of late payment and that the same did not require additional consideration as argued by the appellant. He submitted that the appellant was fully aware of the consequences of non-clearance of its obligations as agreed in the sale agreement and that the interest was a genuine estimate of costs that followed the appellant's breach. He stated that the appellant had no viable defence in view of the admission of indebtedness.

[11] Counsel contended that the respondent had clear grounds for a claim of specific performance. He stated that since the appellant had already transferred the property into its name it was no longer possible for the respondent to claim for anything other than specific performance of the sale agreement. He asserted that the sales agreement and two addenda in no way made payment of the consideration by the appellant contingent upon the appellant securing financing. Counsel prayed that the appeal be dismissed with costs and the judgement of the trial Judge upheld.

Duty of first appellate Court

[12] This being a first appeal, this Court is required under Rule 30 of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. Rule 30 (1) of the Judicature (Court of Appeal Rules) Directions, provides as follows:

> 'On any appeal from a decision of the High Court acting in its original jurisdiction, the court may-
> (a) reappraise the evidence and draw inferences of fact.'

[13] On a first appeal, an appellant is entitled to have the appellate court's own consideration and re-evaluation of the evidence as a whole and its own decision thereon. See Banco Arabe Espanol v Bank of Uganda [1999] UGSC 1 and Peters v Sunday Post [1958] EA 424.

[14] In the case of Fr. Narcensio Begumisa & others v Eric Tibebaaga, [2004] UGSC 18, Mulenga JSC in his judgment put the obligation of the first appellate Court in the following words:

> "It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appellate court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."

Analysis

[15] The above principles will be considered as I proceed to resolve this appeal.

[16] As I had already set out in the introduction above, following the appellant's failure to perform his contractual obligation, the respondent filed a summary suit to recover the outstanding contractual sum together with interests and accrued penalties. Pursuant to the suit, the appellant sought leave to appear and defend the suit but its application for leave to defend was dismissed with costs and judgment was entered for the respondent, hence this appeal.

[17] I find it appropriate to briefly set forth the character of the proceedings that were commenced in the trial Court that ultimately culminated into this appeal. Order XXXVI of the Civil Procedure Rules permits a plaintiff to institute a suit by way of summary procedure. The spirit of Order XXXVI is to provide a swift remedy in claims for debts, liquidated sums, and certain landlord-tenant disputes where the defendant has no real

defence. It prevents a defendant from presenting frivolous or vexatious defences to unreasonably prolong litigation. The procedure also assists Court in disposing of cases expeditiously. Under order XXXVI, rule 3, a defendant in a summary suit shall not appear and defend the suit except upon applying for and obtaining leave from the court. In default of the application by the defendant within the period fixed by the summons served upon him or her, the plaintiff shall be entitled to a decree for an amount not exceeding the sum claimed in the plaint, together with interest.

[18] Following the institution of the summary suit, the appellant in accordance with order XXXVI, rule 4, filed an application for leave to appear and defend the suit. The appellant's application was dismissed. It is the dismissal of the appellant's application for leave to appear and defend that prompted this appeal.

[19] I will examine the considerations surrounding an application for leave to appear and defend. The Supreme Court discussed order XXXVI in Post Bank Uganda Ltd v Abdu Sozi [2017] UGSC 1, where it held that:

> 'Defendants in cases which fall under Order 36 are protected by being given the right to apply to court for leave to appear and defend the suit. When the court receives their application and is satisfied by the defendant's affidavit that the defendant has raised a genuine triable and not a sham or frivolous issue, it will grant the defendant leave to appear and defend the suit. (Order 36 rule 4). If the court is not satisfied that the defendant has a triable issue, it will refuse to grant leave to appear and defend the suit, and the plaintiff will be entitled to a decree in the amount claimed....'

[20] In Bhaker Kotecha v Adam Mohammed [2002] 1 EA 112, Court held that where a suit is brought under summary procedure on a specially endorsed plaint, the defendant will be granted leave to appear and defend, if he is able to show that he has a good defence on merits, or that there was a difficult point of law involved; or a dispute as to the facts which ought to be tried or any other circumstances showing reasonable grounds of a *bona fide* defence.

[21] In the case of Children of Africa v Sarick Construction Limited, [2019] UGHCCD 154, triable issue was defined as:

> 'one capable of being resolved through a legal trial i.e. a matter that is subject or liable to judicial examination in court. It has also been defined as an issue that only arises

> when a material proposition of law or fact is affirmed by the one party and denied by the other'

[22] It is generally accepted that when determining an application for leave to appear and defend, the Court should not enter upon a trial on any of the issues raised in the application but it should rather only determine whether the defendant has raised a genuine triable issue and not a sham or frivolous issue.

[23] Therefore, the issues raised in an application for leave to appear and defend should not merely be an elusive or general denial nor should they be vague, illusory or sham intended to delay the plaintiff from recovering his/her money. The applicant in such an application bears the duty to set out with clarity and particularity, the material facts to warrant a trial.

[24] In the instant appeal, paragraphs 5-10 of the affidavit in support of the application for leave to appear and defend sets out circumstances that are alleged to form plausible defences to the respondent's suit. The alleged triable issues in paragraphs 5-10 can be summed up as; the absence of consideration to support the facilitation fees, interest and penalties, unconscionable and exorbitant interest rates and penalties, availability of the refund as a legal remedy, specific performance not being an available remedy to the respondent, and the contract being contingent on securing financing.

[25] In as much as there is only one ground of appeal, the appellant set out several sub-issues that it argued formed *bona fide* triable issues/plausible defences that should have warranted a trial. For ease of comprehension, I will interrogate and appraise the appellant's alleged triable issues in a thematic manner to determine whether the trial Judge arrived at the correct decision.

[26] Before I proceed to appraise the thrust of appellant's arguments, I will set out below the relevant excerpts from the ruling of the Court of first instance. The trial Judge in his ruling noted as follows:

> 'The applicant does not deny the indebtedness but disagrees with the interest of 13% and 16% per annum agreed upon in the two addenda to the contract which counsel now argues is unconscionable. Both parties agreed to the terms of the addenda to the Sale Agreement freely and there is no evidence to prove any factors that would vitiate their agreement. In any event, the issue raised by the Appellant therein, were consequences of the late payment provided for in the addenda which the Appellant

was aware of.....in my opinion, the application is devoid of any merit that would warrant Court to grant leave to appear and defend the suit. The applicant agrees to the fact that they are indebted to the respondent. There are no points of contention in law or fact that in my opinion necessitates the grant of leave to appear and defend the suit'

Lack of consideration for the interest and penalties

[27] Counsel for the appellant contended that there was no additional consideration to support the subsequent imposition of interest, inconvenience fees and other penalties for the delayed payment of the purchase price, as indicated in addenda 1 and 2.

[28] Section 9 (1) of the Contracts Act defines a contract as:

'an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.'

[29] Section 1 of the Contracts Act defines consideration to mean:

'a right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party'

[30] Black's Law Dictionary, 8th Edition, at page 673 defines forbearance as:

'the action of refraining from exercising a legal right, enforcement or debt'

[31] I note that the original contract for the sale and purchase of the property dated 15th November, 2011 did not provide for any interest, penalties and inconvenience fees. The penalties and interests arose from the two addenda that the parties signed after the appellant had failed to perform his contractual obligation within the initially agreed timeframe. The basis of the penalties and interests in clauses 1.1 and 1.2 of the addendum is stated as to atone for the inconvenience of delay and additional time granted to the appellant to clear the contractual balance.

[32] The penalties and interests were imposed upon the appellant through the addenda in exchange for additional time that was granted to the appellant by the respondent, following the appellant's continuous delay and failure to settle the contractual balance. The respondent refrained from taking legal action against the appellant to recover the sums due even when it had the right to do so. The respondent severally extended time beyond what was agreed in the contract, so that the appellant could pay the

outstanding sums. The extension of time to the appellant was a forbearance that amounts to consideration; additional time was exchanged for a monetary penalty and interest. I accept the respondent's submission that the two addenda were a direct consequence of late payment. The appellant's argument that there was no consideration for the penalties and interests is devoid of substance and could not amount to a triable issue to warrant the grant of leave to appear and defend the suit. A perusal of the annexures to the pleadings before the trial Court led Court to find that this sub-issue cannot form a plausible defence to the suit. The trial Judge cannot be faulted.

Validity of the penalties

[33] The appellant contended that the trial Judge would have been required to address the reasonableness of the stipulated penalty.

[34] The definition of a penalty was adopted in Legione v Hateley (1983) 152 CLR 406, 445 as follows:

> 'A penalty, as its name suggests, is in the nature of a punishment for non-observance of a contractual stipulation; it consists of the imposition of an additional or different liability upon breach of the contractual stipulation ...'

[35] In Deluxe Enterprises Limited v Uganda Leasing Co. Limited [2018] UGCA 71, the Court considered the validity of contractual penalties at common law *vis a vis* section 61(1) of the Contracts Act and noted as follows:

> 'It is clear that the common law doctrine of penalties has been overtaken by this provision and the doctrine of freedom of contract. Penalties are enforceable. However, what is prohibited is the innocent party receiving from the party that breaches the contract an unreasonable compensation exceeding the amount named in the penalty stipulated in the agreement.'

[36] I find no reason to depart from the above position. The penalty clause in the addenda between the parties was lawful. As regards whether the penalties were unreasonable, exorbitant or harsh, I will join that issue and interrogate it together with the question as to whether the interest rates were harsh and unconscionable.

Harsh and unconscionable interests and penalties

[37] The appellant argued that the interest of 3% per month claimed under addendum 1 and the penalty interest of 16% per annum claimed under

addendum 2 of the contract are unreasonable, unconscionable and unenforceable since they significantly exceed average commercial bank rates.

[38] The respondent in its suit before the trial court prayed for interest of 16% per annum on the principal balance and that is what Court awarded in the decree.

[39] Section 26 (1) of the Civil Procedure Act provides that;

> 'Where an agreement for the payment of interest is sought to be enforced, and the court is of opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced by legal process, the court may give judgment for the payment of interest at such rate as it may think just.'

[40] The settled position of the law is that parties are free to contract and what is required of a court of law is simply to give effect to the intention of the parties. Freedom of contract forms the bedrock of contracts. Courts will not improve a contract, which the parties have made themselves, however, desirable the improvement maybe. See Tampalin Steamship Co. Ltd v Anglo-Mexican Petroleum Products Co. Ltd [1916]2 AC 397. In Behange Jennifer v School Outfitters (U) Ltd (2000) 1 EA 20, Court stated that once the parties to a contract have signed on the agreed terms, the courts cannot go into it to inquire whether one received too little or too much, except in cases of proven fraud, mistake, duress, undue influence or misrepresentation.

[41] I am mindful of the fact that whereas there is freedom of contract, the parties must contract within the law. To constitute a lawful contract, section 9(1) of the Contracts Act requires that the agreement must be arrived at with the 'free consent of the parties'. Section 12 of the Contracts Act provides that consent is taken to be free if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. In this appeal, as the trial Judge noted, the parties freely consented to the terms of the contract and addenda as regards the interest rates and penalties. There was no evidence in the affidavit in support of the application for leave to appear and defend that would have led Court to a finding that terms of the contract/addenda regarding the interest rates and penalties was arrived at due to coercion, undue influence, fraud, misrepresentation or mistake of any kind.

[42] **The appellant faulted the trial Judge for expecting them to adduce evidence at the stage of** hearing of the application for leave, to prove that

there were factors that would vitiate the agreement. At the stage of hearing an application for leave to appear and defend, an applicant is not expected to prove the merits of his/her defence. Be that as it may, an applicant will not be given leave because he/she has made unsubstantiated allegations of fact or law in his affidavit. An application for leave must set out with clarity and particularity, material facts forming his defence. In the instant appeal, the appellant did not demonstrate in his application how the contractual clauses on the interest rates and penalties vitiated the contract and contravened the Contracts Act. The appellant made no effort to highlight whether the interest rate and penalties that they agreed upon in the contract were arrived at due to coercion, undue influence, fraud, mistake or misrepresentation. There was no averment in the appellant's affidavit in support of the application for leave, that stated with clarity why the penalties and interest rates were harsh, excessive or unconscionable, save for the averment that the interest rates exceeded interest rates imposed by commercial banks.

[43] The interest and penalty clauses in the addenda were so clear that it would be reasonable to presume that the parties clearly understood them and the resultant consequences of its breach. Black's Law Dictionary, 7th Edition at page 1526 defines unconscionable to mean extreme unfairness and unconscionable as having no conscience, unscrupulous; affronting the sense of justice, decency or reasonableness.

[44] As I have already enunciated above, the interest and penalties were not without basis. They were imposed to cater for the deprivation of income and inconveniences occasioned to the respondent by the appellant's failure to settle the contractual sum within the agreed timeframe. For Court to invoke section 26 of the Civil Procedure Act and interfere with interest on the account that it is harsh and unconscionable; the interest should have been imposed unfairly to maliciously disadvantage one party. This is not the case here. The interest rates and penalties stipulated in the addenda signed by the parties were freely agreed and cannot be termed as unconscionable. The interest rate of 16% endorsed by the trial Court in the decree is not one that is unheard of in the legal stratosphere. Courts have endorsed interest rates far greater that 16%. In Interfreight Forwarders (U) Limited v East African Development Bank [1993] UGSC 16, Court noted as follows:

> 'I think that some interest was awardable on the sum adjudged. But while I think that the reasons given by the learned Principal Judge was an arbitrary one, the rate of 36% does not appear excessive in the circumstances. I would, therefore, have declined to reduce the rate of interest in question.'

[45] The question of interest in contractual agreements must be determined on a case by case basis as each case/agreement is unique. Due to the circumstances of this case, the interest rates agreed upon in the addenda were justifiable. The authorities cited by the appellant's counsel in his submissions where Court interfered with and reduced the interest rates are distinguishable from the instant appeal. In Cairo International Bank v Sadique M. Janjua [2011] UGSC 30 the appellate Court interfered with the interest rates on the decretal sum that had been awarded by the trial Courts in exercise of their discretion. The interference in that case was not on interest rates that had been expressly stipulated in the contract. In Attorney General v Dr. Maj. (Rtd) Anthony Jallon Okullo [2019] UGCA 164, Court interfered with the rate of interest because it had been unjustifiably imposed against the public purse/resources. In the instant case, two private companies freely reached an agreement as regards contractual interest. I cannot infer any unreasonableness in this agreement.

[46] Since the interest rates and penalties in the contract are not unreasonable, unconscionable nor harsh, no leave could be given to the appellant to defend the suit because the interest in the contract was not one that could prompt Court to invoke section 26(1) of the Civil Procedure Act. There was nothing in the appellant's affidavit in support of the application for leave that could have persuaded the trial Judge to find that there was a plausible defence on this account.

Remedy of specific performance being unavailable to the respondent

[47] Relying on section 64(2)(e) of the Contracts Act (currently section 63(2)(e) of the Contracts Act, Laws of Uganda, (Revised Edition 2023), the appellant contended that clause 3.2 of the contract entitled the appellant to terminate the contract which then deprived the respondent of the remedy of specific performance.

[48] Section 63 of the Contracts Act provides:

> '(2) A party is not entitled to specific performance of a contract where—
> (e) the person against whom the claim is made is at the time entitled, although in breach, to terminate the contract'

[49] Clause 3.2(b) of the contract signed by the parties provides as hereunder:

> 'In the event of failure by the purchaser to pay to the vendor the full consideration after the extension in 3.2(a) above, the Purchaser shall within fifteen days of such failure relinquish possession of the premises back to the

vendor and the vendor shall be entitled to retain 7.5% of any deposits made towards the purchase price for the property plus the value of any improvements effected on the premises by the purchaser.'

[50] My comprehension of section 63 (2) (e) is that the remedy of specific performance would not be available to a plaintiff, only if at the time of the lodgement of the claim, the defendant had a right to terminate the contract. The key wording in section 63(2)(e) is *'at the time entitled'* In the instant case, the appellant did not at the time of institution of the suit have the right to terminate its contract with the respondent. Clause 3.2(b) of the contract makes it clear that the appellant could only terminate the contract within 15 days after the expiration of the 6 months' period to pay the contract balance.

[51] The contract was executed on 15th November, 2011 with payment of $610,000 to be effected within 4 months (not later than 15th March, 2012). After expiration of the 4 months, an additional 2 months would be accorded to the appellant, making a total of 6 months. The effect of clause 3.2(b) was that if 6 months had elapsed without the appellant clearing the purchase price, then the appellant could relinquish possession of the premises back to the respondent within 15 days. The termination and relinquishment of possession of the premises back to the respondent ought to have been done within 15 days after the lapse of 6 months. The phrase "shall" in that clause meant that relinquishment of possession could only be enforced within 15 days. By the time of filing the suit in September, 2023, the timeframe within which the appellant could terminate the contract by relinquishing possession back to the respondent had long expired. Section 63(2)(e) of the Contracts Act was therefore inapplicable because at the time of bringing the claim against the appellant, the appellant no longer had the right to invoke clause 3.2(b) of the contract. Clause 3.2(b) could only be invoked within a particular timeframe. Beyond the specified timeframe, clause 3.2(b) could no longer take effect. The remedy of specific performance was available to the respondent at the time of instituting Civil Suit No. 505 of 2013.

[52] The appellant's claim that the remedy of specific performance was not available to the respondent is misconceived. It could not amount to a *bona fide* triable issue to warrant the grant of leave to appear and defend the suit.

That the contract was contingent and hence unenforceable

[53] Lastly, the appellant while relying on clause 3.2 (a) of the contract contended that the contract was contingent upon the appellant obtaining financing from the bank and therefore without the financing, the appellant could not have performed its contractual obligation. The respondent disputed the agreement being dependent on the availability of financing.

[54] Clause 3.2(a) of the contract stipulated as follows;

> 'The payment in 3.2 above may be extended for a further period of sixty days if the purchaser communicates delay on the part of its financing bank in availing the funds to meet the instalment in 3.2.'

[55] Section 27 of the Contracts Act provides that;

> 'A contract to do something or not to do a particular thing where an uncertain future event on which the contract is contingent, happens, shall not be enforced except where and until that event happens, and where the event becomes impossible, the contract shall become void.'

[56] My understanding of clause 3.2(a) is that the 60 days' payment extension was contingent on the appellant's communication as regards its delay in securing financing for the balance. Nowhere in Clause 3.2 or in the contract does it state that the appellant's payment of the balance of the contractual sum would be contingent on securing financing from the bank. It is only the 60 days' extension that was contingent on the delay by the appellant's bank in availing funds to clear the balance, and after the appellant communicated that event to the respondent. The claim that the agreement was contingent on securing financing is devoid of merit and could not have sufficed as a *bona fide* triable issue.

[57] In conclusion, there was no averment or evidence in the appellant's affidavit in support of the application for leave to appear and defend that could have sufficed as a *bona fide* triable issue to warrant the grant of leave to defend Civil Suit No. 505 of 2013. The appeal has failed to demonstrate how the trial Judge erred in law or fact by refusing to grant the appellant leave to appear and defend the suit.

[58] This appeal is devoid of merit. I would dismiss it with costs.

Decision

[59] As Luswata & Nambayo, JJA agree this appeal is dismissed with costs.

Dated, signed and delivered at Kampala, this 11th day of September, 2025.

Fredrick Egonda-Ntende
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Luswata, Nambayo, JJA)

CIVIL APPEAL NO. 124 OF 2015

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CWEZI PROPERTIES LIMITED ========== APPELLANT

AND

TULIP CONSULTANCY LIMITED ========== RESPONDENT

(On appeal from the ruling and orders of High Court of Uganda (Commercial Division), (Kainamura, J.) delivered on 17th April, 2015)

JUDGMENT OF ESTA NAMBAYO, JA

I have read the draft judgment of my learned brother Egonda-Ntende, JA. I agree with the findings and with the conclusion that the appeal fails and that it should be dismissed with costs.

Dated, signed and delivered at Kampala this 11th day of September 2025.

Esta Nambayo

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

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JUDGMENT OF EVA K. LUSWATA, JA

I have had the opportunity to read in draft the judgment of my learned brother Hon. Justice Fredrick Egonda-Ntende, JA.

I agree with him and have nothing useful to add.

Dated, signed and delivered at Kampala this ..11th.. day of ..September.. 2025.

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EVA K. LUSWATA
JUSTICE OF APPEAL